

FILED
 JUN 4 2008
 RICHARD W. WIEKING
 CLERK, U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

PETITION FOR A WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

Name AZCARATE MARIO

(Last) (First) (Initial)

Prisoner Number 441-186

Institutional Address 5325 Broder Blvd. Dublin
California, 94568 ALAMEDA County Jail

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

MARIO AZCARATE

(Enter the full name of plaintiff in this action.)

VS.

U.S. Government

(Enter the full name of respondent(s) or jailor in this action)

CV 08

2773

JSW

Case No. _____
 (To be provided by the clerk of court)

**PETITION FOR A WRIT
 OF HABEAS CORPUS**

Read Comments Carefully Before Filling In

When and Where to File

You should file in the Northern District if you were convicted and sentenced in one of these counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, Santa Clara, Santa Cruz, San Francisco, San Mateo and Sonoma. You should also file in this district if you are challenging the manner in which your sentence is being executed, such as loss of good time credits, and you are confined in one of these counties. Habeas L.R. 2254-3(a).

If you are challenging your conviction or sentence and you were not convicted and sentenced in one of the above-named fifteen counties, your petition will likely be transferred to the United States District Court for the district in which the state court that convicted and sentenced you is located. If you are challenging the execution of your sentence and you are not in prison in one of these counties, your petition will likely be transferred to the district court for the district that includes the institution where you are confined. Habeas L.R. 2254-3(b).

PET. FOR WRIT OF HAB. CORPUS

- 1 -

1 Who to Name as Respondent

2 You must name the person in whose actual custody you are. This usually means the Warden or
 3 jailor. Do not name the State of California, a city, a county or the superior court of the county in which
 4 you are imprisoned or by whom you were convicted and sentenced. These are not proper
 5 respondents.

6 If you are not presently in custody pursuant to the state judgment against which you seek relief
 7 but may be subject to such custody in the future (e.g., detainees), you must name the person in whose
 8 custody you are now and the Attorney General of the state in which the judgment you seek to attack
 9 was entered.

10 A. INFORMATION ABOUT YOUR CONVICTION AND SENTENCE

11 1. What sentence are you challenging in this petition?

12 (a) Name and location of court that imposed sentence (for example; Alameda
 13 County Superior Court; Oakland):

14 SUPERIOR COURT - Northern Dist. San Francisco cal.

15 Court Location

16 (b) Case number, if known _____

17 (c) Date and terms of sentence 8/15/2007

18 (d) Are you now in custody serving this term? (Custody means being in jail, on
 19 parole or probation, etc.) Yes X No _____

20 Where?

21 Name of Institution: ALAMEDA COUNTY JAIL

22 Address: 5325 Broder BLVD Dublin Ca. 94568

23 2. For what crime were you given this sentence? (If your petition challenges a sentence for
 24 more than one crime, list each crime separately using Penal Code numbers if known. If you are
 25 challenging more than one sentence, you should file a different petition for each sentence.)

26 Possession with intent to distribute an ille-
 27 git substance.

28

1 3. Did you have any of the following?

2 Arraignment: Yes _____ No _____

3 Preliminary Hearing: Yes _____ No _____

4 Motion to Suppress: Yes _____ No X

5 4. How did you plead?

6 Guilty X Not Guilty _____ Nolo Contendere _____

7 Any other plea (specify) _____

8 5. If you went to trial, what kind of trial did you have?

9 Jury _____ Judge alone _____ Judge alone on a transcript _____

10 6. Did you testify at your trial? Yes _____ No ✓

11 7. Did you have an attorney at the following proceedings:

12 (a) Arraignment Yes ✓ No _____

13 (b) Preliminary hearing Yes _____ No _____

14 (c) Time of plea Yes X No _____

15 (d) Trial Yes _____ No _____

16 (e) Sentencing Yes ✓ No _____

17 (f) Appeal Yes _____ No _____

18 (g) Other post-conviction proceeding Yes _____ No _____

19 8. Did you appeal your conviction? Yes _____ No ✓

20 (a) If you did, to what court(s) did you appeal?

21 Court of Appeal Yes _____ No X

22 Year: _____ Result: _____

23 Supreme Court of California Yes _____ No _____

24 Year: _____ Result: _____

25 Any other court Yes _____ No _____

26 Year: _____ Result: _____

27 (b) If you appealed, were the grounds the same as those that you are raising in this

1 petition? Yes _____ No ☒

2 (c) Was there an opinion? Yes _____ No ☒

3 (d) Did you seek permission to file a late appeal under Rule 31(a)?

4 Yes _____ No ☒

5 If you did, give the name of the court and the result:

6 _____
7 _____

8 9. Other than appeals, have you previously filed any petitions, applications or motions with respect to
9 this conviction in any court, state or federal? Yes _____ No ☒

10 [Note: If you previously filed a petition for a writ of habeas corpus in federal court that
11 challenged the same conviction you are challenging now and if that petition was denied or dismissed
12 with prejudice, you must first file a motion in the United States Court of Appeals for the Ninth Circuit
13 for an order authorizing the district court to consider this petition. You may not file a second or
14 subsequent federal habeas petition without first obtaining such an order from the Ninth Circuit. 28
15 U.S.C. §§ 2244(b).]

16 (a) If you sought relief in any proceeding other than an appeal, answer the following
17 questions for each proceeding. Attach extra paper if you need more space.

18 I. Name of Court: _____

19 Type of Proceeding: _____

20 Grounds raised (Be brief but specific):

21 a. _____

22 b. _____

23 c. _____

24 d. _____

25 Result: _____ Date of Result: _____

26 II. Name of Court: _____

27 Type of Proceeding: _____

28 Grounds raised (Be brief but specific):

1 a. _____
2 b. _____
3 c. _____
4 d. _____
5 Result: _____ Date of Result: _____

6 III. Name of Court: _____
7 Type of Proceeding: _____
8 Grounds raised (Be brief but specific):
9 a. _____
10 b. _____
11 c. _____
12 d. _____
13 Result: _____ Date of Result: _____

14 IV. Name of Court: _____
15 Type of Proceeding: _____
16 Grounds raised (Be brief but specific):
17 a. _____
18 b. _____
19 c. _____
20 d. _____
21 Result: _____ Date of Result: _____

22 (b) Is any petition, appeal or other post-conviction proceeding now pending in any court?

23 Yes _____ No _____

24 Name and location of court: _____

25 **B. GROUNDS FOR RELIEF**

26 State briefly every reason that you believe you are being confined unlawfully. Give facts to
27 support each claim. For example, what legal right or privilege were you denied? What happened?
28 Who made the error? Avoid legal arguments with numerous case citations. Attach extra paper if you

1 need more space. Answer the same questions for each claim.

2 [Note: You must present ALL your claims in your first federal habeas petition. Subsequent
3 petitions may be dismissed without review on the merits. 28 U.S.C. §§ 2244(b); McCleskey v. Zant,
4 499 U.S. 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991).]

5 Claim One: Thirteen (13) months incarceration in
6 det.

7 Supporting Facts: ACTUAL TIME - SPENT IN custody in
8 (England) waiting on extradition warrant.

9
10
11 Claim Two: Entitled to credit

12
13 Supporting Facts: Being in custody in England
14 (London) 13 months waiting for warrant to
15 be served.

16
17 Claim Three: Inadequate counsel.

18
19 Supporting Facts:

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21
22
23 If any of these grounds was not previously presented to any other court, state briefly which
24 grounds were not presented and why:

1 List, by name and citation only, any cases that you think are close factually to yours so that they
2 are an example of the error you believe occurred in your case. Do not discuss the holding or reasoning
3 of these cases:
4
5
6

7 Do you have an attorney for this petition? Yes X No

8 If you do, give the name and address of your attorney: tel: (510) 465 6363
9 Dennis Roberts - 370 Grant ave. Oakland, Ca 94610

10 WHEREFORE, petitioner prays that the Court grant petitioner relief to which s/he may be entitled in
11 this proceeding. I verify under penalty of perjury that the foregoing is true and correct.
12

13 Executed on 5/17/2008
14 Date

M. G. Z. [Signature]
Signature of Petitioner

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20 (Rev. 6/02)

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to: Honorable Judge Jeffrey White:

JSW

2773

CV 08

Dear Judge: Following up after my appearance in court the 17 of April, I feel compelled to send this petition to the court on the ground that a process had already started it - when your honor wrote an order to the government and Bureau of prisons to show due cause, no question of jurisdiction was raised then, and they followed the order, so a process all ready started and I feel a continuance is in order. If the question of jurisdiction was no raised then, it's my feeling, it's not applicable now, that, as I said before a process had already started. Adding to that; that day in court, your honor mentioned that you can sentence me, but that perhaps it was too late; but, I happened to find out that it's not too late; I was sentenced in August last year; it's not a year yet. These and other issues were not brought out at that time, to the light of the court, that's why I'm writing this petition. As your honor might remember, counsel at that time manifested to the court, that from then on I have to figure

out a way to represent myself; I had found that, a lawyer that is very familiar with my case and had represented me before, and that I had kept in communication and inform him up to this date about my case, is willing to assist me in this last episode of my sentencing; his name, address and telephone #, is at the end of this petition. In this way I'm following instruction that the court gave to me before; when it did emphasize to me to communicate to the court through counsel.

I feel most grateful to your honor for the consideration and attention your honor give to this matter.

Respectfully,
Marisol Garcia

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